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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly N'diaye, submitted pursuant to Commission resolution 1995/66

Addendum

Report by the Special Rapporteur on his mission to Papua New Guinea island of Bougainville from 23 to 28 October 1995

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Introduction

1. In pursuance of Commission on Human Rights resolution 1994/81 of 9 March 1994 and resolution 1995/65 of 7 March 1995, in which the Commission requested the relevant thematic rapporteurs to visit the Papua New Guinea island of Bougainville to monitor the peace process and report on the situation of human rights, the Special Rapporteur on extrajudicial, summary and arbitrary executions visited Papua New Guinea, including parts of the island of Bougainville, from 23 to 28 October 1995. The Special Rapporteur thanks the Government of Papua New Guinea for its invitation to carry out this mission and for the cooperation he received during the mission, in the course of which he was able to meet with individuals and representatives of organizations. He was able to travel freely within the country, except to the central part of Bougainville for reasons given below.

2. On his way to Papua New Guinea, the Special Rapporteur stopped in Sydney, Australia, where he had meetings with victims of violations of human rights from the island of Bougainville, officials of Amnesty International, representatives of the International Commission of Jurists, representatives of the Bougainville Revolutionary Army (BRA) and individuals who have first-hand knowledge and experience of the situation of human rights on the island of Bougainville. At that time, the Special Rapporteur received written guarantees of safe conduct from the officials of the BRA for the United Nations team, the helicopter and the pilot, for the proposed visit to the central part of Bougainville, which is currently under the control of the BRA.

3. In Port Moresby, the capital of Papua New Guinea, the Special Rapporteur had meetings with the Prime Minister, Sir Julius Chan, and officials of the Ministry of Foreign Affairs and Trade, and the Ministry of Justice, as well as with the Chief Justice, the chief of the Ombudsman Commission, officials of the Correctional Services and the Chief of Staff, Papua New Guinea Defence Force (PNGDF). Meetings were also held with the Chief of PNGDF, who provided assurances of safety and security on the part of the Government of Papua New Guinea for visits within Bougainville to areas currently under the control of the Government.

4. Also in Port Moresby, the Special Rapporteur met with families of victims of violations of human rights, including extrajudicial, summary and arbitrary executions, representatives of non-governmental organizations working in the field of human rights and United Nations specialized agencies concerned with delivering humanitarian aid, and individuals.

5. During the period from 24 to 26 October 1995, meetings were held in Buka (the small island at the north-western tip of the island of Bougainville) with the Premier and officials of the Bougainville Transitional Government, representatives of women's groups, representatives of church groups, former officials of the previous provincial administration and individuals who were victims of violations of human rights. Several of those interviewed had come from the main island of Bougainville.

6. The visit scheduled for 25 October 1995 to the central part of Bougainville, under the control of the BRA, i.e. Sipuru, Panguna and surrounding areas could not take place because of mechanical problems which developed with the only operational and available helicopter, and because of unfavourable weather conditions.

7. After returning to Port Moresby, on 26 October 1995, a further attempt to visit the central part of Bougainville on 28 October 1995 was negotiated with all parties concerned, as the helicopter had meanwhile been repaired. However, the proposed plan had to be abandoned after the Special Rapporteur was informed by officials of the Bougainville Interim Government (BIG) (dissidents in exile in Honiara, Solomon Islands) that the large numbers of people who had previously gathered in Sipuru to meet the Special Rapporteur had returned to their respective villages and also because the weather conditions would be unfavourable for travel by helicopter on the proposed day.

I. PAPUA NEW GUINEA AND THE ISLAND OF BOUGAINVILLE 1/

8. Papua New Guinea consists of the eastern half of the island of New Guinea and numerous smaller islands. Much of the terrain is extremely rugged, with large mountain ranges and villages located on steep slopes. There is an extensive system of marshes along the coast. The country has only a few major roads and many areas are accessible only by air, by boat or on foot.

9. Papua New Guinea is noted for its cultural and linguistic variety. More than 700 distinct languages are spoken in the country. Melanesian Pidgin is spoken widely throughout the country as a lingua franca, as is Hiri-motu, spoken in some parts of the south coast area. English, however, is the language of instruction and is used in the administrative and commercial sectors. According to the latest figures available, the population of Papua New Guinea is estimated to be 3,761,954. 2/

10. Bougainville, including the small island of Buka, 3/ is about 800 kilometres away from the mainland of Papua New Guinea. The two islands are separated by a shallow strait 800 metres wide. Their total length is 240 kilometres. Bougainville itself is 64 kilometres at its widest part. The total land area is approximately 9,000 square kilometres, which includes 13 square kilometres of lakes and freshwater swamps. About half of the land area is mountainous, ranging from heights of 1,500 to 2,400 metres and there are several active or dormant volcanoes. Bougainville is situated to the north-west across from Solomon Islands.

11. Bougainville (including Buka) did not come under the influence of any European power until 1884, when Germany annexed North-East New Guinea and the Bismarck Archipelago. Queensland (Australia) and later Great Britain annexed Papua (i.e. south-east New Guinea).

12. Bougainville and Buka were not officially added to the German colony until 1899. By an exchange of notes with Great Britain in 1886, these islands (including Shortland, Choseul and Isabel) were declared to be under the German sphere of influence. 4/

13. In 1902, Catholic missionaries, mainly from Germany and France, arrived on Bougainville's eastern coast, near Kieta, and later proceeded inland. Mission stations were set up in various parts of the island. The first missionaries were followed by those of other Christian denominations.

14. After the outbreak of the First World War, the German New Guinea surrendered to troops under Australian command on 9 December 1914. Australia administered the colony until 1921, when it was proclaimed a ward of the new League of Nations, under mandate to Australia, 5/ as of May 1921, remaining separate from Papua.

15. During the Second World War, Buka was attacked in January 1942, soon after the bombing of Pearl Harbour. This resulted in the occupation and control of the Buka Passage, as well as of Buka and Bougainville, by the Japanese. In August 1945, the Japanese forces surrendered and a civilian administration was once again established by Australia. In 1947, Bougainville became a United Nations Trust Territory administered by Australia, and became part of Papua New Guinea when it gained independence in 1975.

II. THE CONSTITUTIONAL FRAMEWORK

16. The Constitution of Papua New Guinea provides specific safeguards for fundamental freedoms, which include freedom of speech, freedom of the media, freedom of peaceful assembly and association, freedom of religion, freedom of movement and respect for political rights through direct elections by secret ballot on the basis of universal suffrage. The Constitution also creates an independent judicial system and the citizens have full access to courts which provide recourse to due process of law. It establishes a "Leadership Code", regulating the conduct of government officials, provides for the protection of citizens from arbitrary arrest or detention and safeguards the right to life. Provision is also made for the constitutional offices of Public Prosecutor, Public Solicitor and Ombudsman Commission.

17. The police force is under the control of the Commissioner of Police and the armed forces are controlled by the Commander of the Defence Force, the National Executive Council (NEC) being the overall authority over both these forces. The Head of State can request the Defence Force to assist the civilian authorities, on the advice of NEC, in monitoring internal security. However, the Defence Force may not exceed the powers conferred on the police.

III. THE SETTING UP OF A COPPER MINE IN BOUGAINVILLE

18. In 1963, the Government of Australia granted a mining exploration licence to CRA Exploration (which later became Copper Pty. Ltd.) to prospect for copper at Panguna in Bougainville. At that time, overall authority over the territory of Papua and New Guinea rested with the Minister of Territories in Canberra (Australia), although the Administrator in Port Moresby could propose and make minor policy changes. The process of buying land from local landowners, including white plantation owners, created many problems. In order to deal with grievances arising out of the mining operations, a Warden's Court was set up in Kieta (Bougainville) to deal with complaints against the company. In 1969, the Chief Liaison Office was created in Bougainville District to deal with relations between the residents of Bougainville and the

company. The Public Solicitor's Office in Port Moresby took the claims of aggrieved residents of Bougainville all the way up to the Australian High Court. After mining started in 1972, the company was registered in the Territory of Papua and New Guinea and renamed Bougainville Copper Ltd. (BCL).

19. Under Australia's Mining Ordinance 1928-40, all mineral rights belonged to the Crown, i.e. the Administration, and this law was applied in the mandated Territory of New Guinea. It was difficult for the Bougainvilleans to accept that although they owned the land, they did not have ownership rights to what was located underneath the land. In addition, all royalties acquired from the mining operations were to be paid to the Administration, for the benefit of the Territory as a whole. This also created difficulties. According to information received, traditional Bougainvillean society in the vicinity of where the copper mine began its operations, i.e. Panguna and the northern part of Nasioi, is matrilineal. However, in some cases the land transfers to the mining company were signed by the men. In addition, the customary law applicable to land tenure is not recorded or codified. Under the land tenure system of Nasioi, it would appear that it was and still is possible to have different kinds of ownership, 6/ which created further difficulties regarding the issue of land rights in the area where mining operations had started.

20. Mining operations began in 1972. Meanwhile, landowners, as well as other Bougainvilleans, were extremely dissatisfied with the prevailing situation. Amongst their many grievances was the perception that mineral resources (which were located under the land) continued to belong to the landowners and should therefore be subject to a separate agreement (to their benefit), even after the land was sold. Aggrieved parties brought their claims for compensation before the Mining Warden and appealed to the Supreme Court of the Territories (or to the Australian Supreme Court before Papua New Guinea became independent in 1975).

21. Although some measures were adopted to grant compensation and prevent environmental danger, the people of Bougainville did not consider them to be adequate. The situation continued to deteriorate as communities around the mining area in Panguna found that they could no longer pursue their traditional ways of life owing to environmental damage to marine life, as well as to agricultural crops, in addition to the loss of tranquillity because of the noise from the continuous blasting operations. Moreover, there was a general feeling that the province was not benefiting equitably from the vast profits made from the copper mine. In the 17 years during which the mine was in operation, the division of profits (304,412 kg. of gold and 780,875 kg. of silver resulting in net sales of 1,900 million kina) was distributed as follows: 685 million kina to the central Government, 75 million kina to the North Solomons provincial government (Bougainville) and 22 million kina to the landowners. As the mine continued to operate, frustration continued to accumulate amongst the people of Bougainville, who believed that Bougainville had been the most neglected province under the Australian Administration, an additional reason to receive a greater share in the profits of mining operations. Many non-Bougainvilleans who were employed by the mine were seen as rivals for coveted jobs and there was discontent about the higher wages given to expatriates for doing the same work as that done by Bougainvilleans. The non-Bougainvillean workers formed squatter settlements on government and

traditionally owned land and were difficult to disperse. Their misbehaviour, often arising because of the lack of a proper family life together with alcoholism, and criminal activity gave further fuel to the discontent of the people of Bougainville, who considered themselves different: more progressive, educated and peaceful. In an agreement of 1974, it was stipulated that every seven years, there would be a review for mutual fairness between the Bougainville Copper Ltd. (BCL) and the Government of Papua New Guinea. Although representatives of BCL were agreeable to this review, they insisted that the provincial government should be involved in the discussion. However, the Central Government refused to accept this proposal because it feared that the provincial government would demand a larger share in the profits of the mine. No review took place. Anti-government feeling began to increase and Bougainville became alienated from the Central Government. This lead to the belief of the Bougainvilleans that the only solution would be to seek independence for Bougainville.

22. In 1979, the Panguna Landowners Association (PLA) was formed. The association was recognized by BCL. The Road-Mine-Tailings Trust Fund (RMTL) was established in 1980 to assist in providing compensation, health and educational facilities and grants for setting up new businesses. Although the Trust was beneficial initially, it reportedly became ineffective over a period of years for various reasons, including accusations against the elders of inadequate management, corruption and favouritism.

23. In 1987, a new group, representing the younger generation, was formed. The secretary of this group, Francis Ona, with the support of the Premier of the provincial government of Bougainville, Joseph Kabui, demanded that in future all dealings by BCL were to be conducted with the PLA. The new group's demands continued to increase, to the extent that it lead to the belief that they were being made with the intention of seeking a break with the mining company and the Government. The formalization of this group as the Bougainville Revolutionary Army (BRA) lent further support to this belief.

IV. THE BOUGAINVILLE CRISIS

24. Demands by the Bougainvilleans were rejected by BCL 7/ towards the end of 1988. In November 1988, attacks on mine personnel and people seen as friends of BCL increased. The BRA stole a quantity of explosives from the mine and used them to topple pylons that brought electricity to the mine. The road to the mine was blocked and work at the mine ceased. Francis Ona and other leads of the BRA went into hiding at Kongara. In February 1989, while in hiding, Francis Ona submitted a list of demands which included: (a) kina 10,000 million compensation from the mining company for all resources destroyed between 1963 and 1988; (b) the payment of 50 per cent of all profits to the landowners and the Bougainville provincial government; (c) BCL was to become a local company belonging to the landowners and the provincial government within five years; (d) the Central Government was to give to Bougainville all money received from BCL during the period 1972-1988.

25. In May 1989, the Government made counterproposals which included: (a) sale at cost price (half to the landowners and half to the provincial government) of the 4.5 per cent equity held by the Government (the price to be deducted from future dividends) and, in addition, a further 5.1 per cent of

the share owned by the Government; (b) five million kinas increased compensation to the provincial government; (c) development package, which included increased health, education and other facilities. These counterproposals were not accepted by the PLA.

26. The efforts of the clergy to negotiate a settlement of the demands of the landowners, removal of the security forces that the Government of Papua New Guinea had brought in specially, as well as amnesty and reconciliation with the BRA leader, Mr. Ona, failed. At that time, safe passage was offered to Mr. Kaouna, a commander of the BRA, so that he could come down from the mountains to participate in talks. However, when he failed to come down, a reward of kina 200,000 was offered for Mr. Ona's capture.

27. The copper mine continued to be attacked and its power lines blown up by the militants, who were known initially as the Bougainville Republican Army, and later the Bougainville Revolutionary Army. After repeated attacks resulting in the disruption of its proper functioning, the mine closed down in February 1990.

28. The Police Riot Squad, sent to deal with the disturbances, acted by committing indiscriminate violence, a situation never encountered previously by the Bougainvilleans. The methods used included the burning of villages, beatings, lootings and on occasion even rape and murder. The issue of human rights was completely ignored and the conflict in Bougainville continued. The Papua New Guinea Defence Force (PNGDF), sent in later to deal with the situation, also resorted to brutal and illegal ways in order to contain the strife.

29. After the Defence Force was withdrawn from Bougainville in March 1989, Buka was attacked by BRA units from further south. It has been reported that at that time they terrorized the village, kidnapped girls, committed rape and murder of those Bougainvilleans who had represented the Central Government or BCL, as well as those who were Highlanders or Sepiks (and who were not Bougainvilleans).

30. The women of Buka wished to see an end to the strife and the reopening of schools and brought pressure to bear upon the chiefs to form a liberation force for protection against the BRA. In September 1990, the people from the villages in the north of Buka sent a delegation to Nissan Island to meet with the PNGDF forces and bring them back to the island.

31. In the central and southern part of Bougainville, the BRA units had gradually broke down into village militia. According to information received, the BRA, based in Honiara, Solomon Islands, although seen from outside as an independent government in exile and a unified revolutionary army, does not have full control of its members operating within Bougainville, except for some of those under the direct control of Francis Ona, and the revolutionary army consists of small semi-independent units, each under the control of autonomous commanders.

32. On 2 May 1990, the Government of Papua New Guinea imposed a naval blockade around Bougainville, effectively preventing any supplies from getting through to Bougainville, either from Solomon Islands 8/ or elsewhere. This

eventually resulted in a penury of essential goods, especially food, fuel, medicines and clothing. The imposition of the naval blockade whereby the population of Bougainville was trapped for prolonged periods is believed to have caused immense hardship. According to information received by the Special Rapporteur, an estimated 5 per cent of the population of Bougainville died owing to lack of medicines and food. Organizations such as Médecins sans frontières (MSF) and the Red Cross were denied access to the central part of Bougainville and the care centres (see para. 43 below). As a result, in November 1993, MSF withdrew from Bougainville reportedly because these constraints rendered the team's medical activities in Bougainville almost totally ineffective. In May 1990, all non-Bougainvilleans were ordered to leave the island. On 17 May 1990, a unilateral declaration of independence (UDI) was proclaimed and the Bougainville Interim Government (BIG) was formed under the leadership of Mr. Sam Kauona, 9/ Joseph Kabui 10/ and Francis Ona. 11/

33. The crisis in Bougainville continued and many allegations of serious violations of human rights were widely reported. Initially, when the PNGDF was first posted in Bougainville, its members reportedly conducted themselves in a disciplined manner. However, according to information received, their approach changed when they suffered casualties at the hands of the BRA. According to well-documented information, 12/ atrocities have been committed by both sides, i.e. by PNGDF and BRA, as well as by the "resistance forces". These "resistance forces" are Bougainvilleans who support the Government of Papua New Guinea and were reportedly recruited as paramilitary forces and armed by the Government. The chain reaction set up by "pay-back" (reprisal) killings, which appear to be a customary way of settling scores, have exacerbated the situation. The response of the PNGDF was alleged to be brutal and included widespread looting, burning of homesteads, gardens and entire villages, as well as rape and killings. The conflict has engendered a great deal of fear and hatred, and has resulted in attacks and counter-attacks which continue to be virulent. The situation for the population in some parts of Bougainville has still not returned to normal after the chaos resulting from the initial years of the conflict, which began in 1989 when the situation in Bougainville became unmanageable.

34. Neighbouring countries have supplied arms to both parties to the conflict. It has been reported that assistance to the Government of Papua New Guinea included Australian helicopters, which were reportedly used for combat purposes. The BRA allegedly received assistance and support, which included arms, from Solomon Islands.

35. Although there has been a series of peace ceremonies, especially since October 1994, which resulted in the laying down of some arms, the Special Rapporteur was informed that the "resistance forces" remain armed. Although many members of the BRA came down from the mountains to participate in peace negotiations, it has been reported to the Special Rapporteur that the BRA are also well armed.

36. The question of secession in Bougainville dates back to 1968 when a group of Bougainvilleans, together with a member of the House of Assembly of Papua New Guinea made a statement in Port Moresby and suggested that amongst various options available, consideration could be given to whether

Bougainville should form an independent nation, whether, after disengaging itself from Papua New Guinea, Bougainville should join with the then British Solomon Islands, or whether it should remain with Papua New Guinea. This issue, it was suggested, could be decided by means of a referendum or a plebiscite.

37. The question of a referendum continued to be discussed by local government councils in 1970. Local government through an elected council was first introduced in Bougainville in 1949. There were eight such councils by 1965. The provincial government was established after prolonged discussions with the central Government regarding the division of powers and functions. As certain contentious issues remained unresolved, Bougainvillean leaders declared independence in September 1975, only two weeks before Papua New Guinea became independent. However, the North Solomons provincial government remained in power because, under a system of provincial governments, Bougainville was able to assume considerable autonomy.

38. On 17 May 1990, the Bougainville Revolutionary Army announced a unilateral declaration of independence in Bougainville. The Government of Papua New Guinea declared a state of emergency in May 1990 imposing a naval blockade in respect of all goods and services except essential medical supplies. Initially the blockade extended for a radius of 80 km around the coast of Bougainville, but later it was reduced to 12 nautical miles. It affected the whole of the civilian population of Bougainville, which was held hostage for a long period.

39. The Special Rapporteur has been informed that the naval blockade has long since been lifted. However, it was reported to him that the area under the control of the BRA in the central part of Bougainville is completely surrounded by the PNGDF. This, in effect, amounts to a blockade and, reportedly, the population in that area continues to be deprived of basic requirements. The situation is such that it could be regarded as amounting to a de facto state of emergency.

40. When the PNGDF returned to Buka to deal with the disturbances (see para. 29 above), they landed first in the north, together with the "resistance forces" (also known as the Bougainville Liberation Force (BLF)). There followed a "clean-up of young BRA members, at the request of the chiefs, who had been terrorized by them. Reportedly, some BRA members fled south; others who were caught were accused, summarily executed and buried in unmarked graves.

41. The success of the BLF ("resistance forces") in Buka encouraged the PNGDF to establish such groups in other areas, and they were used as advance scouts armed patrols and contact people to bring people out of the bush into care centres. The BLF consisted of some who were genuinely in favour of peace, those who merely wanted access to arms and a licence to kill, and those who wanted to settle old scores, settle land disputes or solve leadership struggles. There were some who reportedly committed torture and murder in the presence of the PNGDF.

42. As the PNGDF advanced, they set up care centres for, especially, women and children who wanted to come out of hiding to return to their normal lives. It has been claimed that assaults, rape, killing and torture have been

committed by both BRA members and PNGDF members, especially in the earlier period of the conflict, against those who were living in care centres. It may be mentioned here that the Special Rapporteur has been informed that apart from the high general rate of criminality in Papua New Guinea, the frequency of the crime of rape is also very high.

43. It has been reported that among the villagers, and generally in Papua New Guinea, it was common practice to settle disagreements over land, women, cattle or ancient feuds through tribal fighting. When the system of village chiefs and elders broke down in Bougainville, and especially in the absence of the police force and the armed forces, many of the old tribal fights broke out again and the BRA took on the role of traditional tribal fighters.

44. The area of Kongara, where Joseph Kabui and Francis Ona lived, was more unified because of the presence of Theodore Miriung, a chief in his own right, who established a traditionally based "council of chiefs" to re-establish a just system of law and order in the villages.

45. Mr. Miriung, who had retreated into the bush and mountain areas of Kongara with the other leaders of the BRA, came out to participate in the peace conference of October 1994. At that time, the other BRA leaders did not join him, as they feared for their safety.

46. It was reported that by September 1994 there were 2,000 people in care centres in Arawa, 1,000 at Loloho (both located in the central part of Bougainville) and about 50,000 more in other centres.

47. The economy of Papua New Guinea was burdened with the expense of maintaining the care centres, on the one hand, and with losing the income derived from the copper mine (which was reported to be up to a third of total national revenue), on the other, as well as with the estimated 80 million kina a year cost of peacekeeping.

48. It was reported to the Special Rapporteur that the members of the PNGDF were being paid a 25 kina risk allowance, while serving in Bougainville.

V. VIOLATIONS OF HUMAN RIGHTS IN BOUGAINVILLE

49. The Special Rapporteur has transmitted to the Government of Papua New Guinea several allegations of human rights violations on the island of Bougainville, during the past three years (see E/CN.4/1996/4). However, no response to these allegations has to date been received from the Government of Papua New Guinea.

A. The right to life

50. It has been reported to the Special Rapporteur that between the beginning of 1991 and October 1995, at least 64 persons were believed to have been extrajudicially executed by the PNGDF, some of them after being beaten or cut with knives. Other victims have been tied to the backs of trucks and dragged along the road, before being shot and killed. Bodies are reported to have been dumped at sea from helicopters, while others are said to have been

covered with rubber tyres and burnt. Reportedly, those subjected to extrajudicial executions include members or suspected members of the BRA and those believed to have aligned themselves with the Bougainville Interim Government in exile. Individuals attempting to cross over to the Solomon Islands, including unarmed civilians, have also been the victims of extrajudicial executions by the PNGDF. It may be noted that from Buin Beach in the south of Bougainville to the nearest of the Shortlands Islands (part of Solomon Islands) is a run of about 20 minutes in an aluminium boat with a 25 hp engine.

51. The following cases of extrajudicial execution were among those reported to the Special Rapporteur:

(a) Ken Savia, the Minister for Health in the Bougainville Interim Government, allegedly disappeared in February 1993 from Arawa, Bougainville. He was apparently abducted by government troops on 13 February 1993 after the PNGDF stormed the Arawa hospital. The Prime Minister's press secretary reportedly stated several days after the raid that Ken Savia was among those arrested at the time of the raid and that he was being held at the former Arawa Town Council complex. He is widely believed to have been killed by government soldiers after being brutally tortured.

(b) On 26 January 1993, Boniface, Jose Naviung, Rodney Soguwan, Ales Soloman, Steven Tampura and Zarcharias were reportedly shot dead when government troops intercepted a suspected BRA boat. A seventh person, Moresi Tua, was shot and wounded but managed to escape. It was not clear whether any investigation was conducted into the reported killings.

(c) On December 1994, Damien Ona, Apiato Bobunung and Robert were reportedly detained by the PNGDF when the bus on which they were travelling was stopped and searched. It is believed that the presence of weapons on the bus prompted the PNGDF to link the three with the killing of two PNGDF soldiers by the BRA previously. The three are believed to have been killed. Their bodies have since been recovered from a grave and returned to their families.

(d) On 5 December 1994, Shane Seeto from Kobuan, the same village in which the two PNGDF soldiers were ambushed by the BRA, was arrested. He was stopped by the PNGDF as he was travelling to Arawa hospital to seek medical treatment for a wound he had sustained in a motorbike accident. It is believed he was then taken to the military camp at Arawa. His mother, on hearing that he had been detained, went to the military camp in Loloho, a distance of some 5 to 10 kilometres from Arawa. There she was told by the PNGDF that her son had been released and was at home. On discovering that her son was not at home, Mrs. Seeto travelled to the PNGDF Arawa camp, where she was told that Shane was not there. She was finally told that he had run away, and this was confirmed by the captain at the Loloho camp, to which she returned. His family have never recovered his body.

52. Moreover, the Special Rapporteur raised with the Papua New Guinea authorities a request for further information on the case of Lauta, an 18-year-old Bougainvillean, who was allegedly taken by "resistance forces" from a care centre in Siwai district, where he lived with his parents, and has never been seen again.

B. Atrocities in care centres

53. Allegations have been made that some of those who were in care centres did not have freedom of movement and were subjected to torture, harassment and ill-treatment by those in charge of the care centres, as well as by the BRA, who attacked the care centres from time to time and killed persons living in them.

54. The Special Rapporteur is not aware of any prisoners who are being held in custody and has received no reports in this regard. He wishes to emphasize the importance of respecting the rules of humanitarian law and the relevant Geneva Conventions which apply to those who surrender or are taken into custody in a situation of armed conflict.

C. Freedom of movement

55. It is not clear whether the population of Bougainville, especially in the central part and those who remain in care centres, are able to move freely within the country and whether they can go abroad if they wish. The military control around the central part of Bougainville, it has been claimed, severely restricts freedom of movement in that part of Bougainville.

D. The right to education

56. Although it has been reported that in some parts of Bougainville, like Buin, some primary and secondary schools have reopened, according to information received, the situation regarding access to normal schooling is far from satisfactory in all parts of Bougainville. It has been reported that schools which reopened in early 1995 have again been closed because of renewed hostilities.

E. The right to health

57. The breakdown of health services, arising out of the conflict, the scarcity of medicines, due to the blockade and the withdrawal of organizations like Médecins sans frontières have seriously jeopardized the right to health of the civilian population of Bougainville. In this context, the situation of children is especially difficult as they are deprived of preventive as well as primary medical care.

F. The administration of justice

58. Although there is a well-established system of courts which gives full protection of law, in practice recourse to justice is very limited. There is a shortage of lawyers, and in any event most aggrieved parties are unable to afford lawyers' fees. There is little understanding of the workings of the judiciary and the people lack knowledge of their rights, especially in cases

where officials such as members of the armed forces have violated their human rights. There is provision for only 10 judges and, as a result, no regular courts are established in Bougainville. The lack of capacity of the judicial system to address violations of human rights has created tremendous hardships for the victims. It has been reported that out of about 50 complaints registered by means of merely filling out a form, regarded as being far from adequate, none were actually adjudicated by the courts.

VI. PEACE NEGOTIATIONS

59. During a meeting held aboard Endeavour, one of three ships provided by New Zealand for talks near Kieta Harbour for a week starting 28 July 1990, unconditional lifting of the blockade, restoration of essential services, human rights violations, compensation and independence for Bougainville were among the topics discussed. The talks were held in the presence of international observers from Canada, New Zealand and Vanuatu and the "Endeavour Accord" was signed. However, the terms of the accord were not adhered to, owing to disagreements which arose later.

60. The Honiara Declaration of Peace, Reconciliation and Rehabilitation on Bougainville was signed by the two parties to the conflict after meeting in Hohiara, Solomon Islands from 22 to 24 January 1991. Although the Declaration covered many aspects of concern to both parties, once again difficulties remained unresolved.

61. In October 1994, a peace conference was held in Arawa, Bougainville, after the declaration of a cease-fire on 9 September 1994. (For details of the agreement reached see E/CN.4/1995/60.)

62. In September 1995, a preliminary meeting was held between the representatives of the Bougainville Transitional Government (BTG) and the Bougainville Interim Government (BIG)/Bougainville Revolutionary Army (BRA) representatives, in Cairns, Australia.

63. A further meeting of the "All Bougainville Leaders Talks" was held in December 1995 with the participation of representatives of BTG and BIG under the joint chairmanship of the representatives of the United Nations Secretary-General and the Secretary of the Commonwealth. Representatives of the International Commission of Jurists were also among those who participated in the talks as observers.

64. Bougainville has been given a transitional period of two years by the Government of Papua New Guinea to continue with the system of provincial government. The BTG under the premiership of Mr. Theodore Miriung, has reserved two of its seats for the leaders of the BRA. These seats have not yet been filled, although the new Transitional Government was installed in April 1995.

VII. AMNESTY

65. According to information received, an official amnesty was granted to all those who had committed offences which could be regarded as connected with the

Bougainville crisis, including members of the BRA who had surrendered, to cover the period from 1 October 1988 to 19 May 1995. This period was later extended to 1 July 1995.

66. In a joint agreement "based on national interest", the central Government and the Premier of Bougainville, Mr. Theodore Miriung, have agreed that the Commissioner of Police will not proceed with the prosecution of offences committed in relation to the Bougainville crisis, but instead the Bougainville Transitional Government will institute, within the province, appropriate machinery for the implementation of amnesty and pardon and other measures necessary for the reconciliation of the people of Bougainville. In this connection, the Government informed the Special Rapporteur that other options, including possible legislation for the implementation and endorsement of the proposed amnesty, are under consideration.

67. It is not entirely clear how the provisions of the amnesty will be implemented, or whether it will be within the framework of the Constitution and laws applicable in Papua New Guinea. The attention of the Special Rapporteur was drawn to the need for some process of reconciliation, and the possibility of following the Melanesian tradition to achieve peace, even though the process could not be brought fully within the legal framework of Papua New Guinea.

68. According to information received, in August 1995, mediators (BRA and "resistance forces" leaders trained in conflict resolution) successfully mediated the amnesty of a person who had committed murder during the crisis, resulting in compensation and a peace ceremony.

VIII. CONCLUDING REMARKS

69. The Constitution of Papua New Guinea provides full protection for fundamental human rights. As far as the right to life is concerned in the context of the death penalty, the first such sentence, which was imposed only in 1995, is still under appeal. The death penalty was introduced in Papua New Guinea in 1993.

70. The Leadership Code (see para. 17 above) is well-conceived. However, the resignation of an official under scrutiny from government office automatically leads to discontinuation of investigation or action against the official concerned, a situation which needs rectification.

A. Peace and conflict resolution

71. The Special Rapporteur noted the following:

(a) He observed a great longing, among all, for peace on the island.

(b) There is a need for confidence-building in order to remove mistrust between the parties to the conflict, especially so far as certain leaders of the BRA are concerned, as they fear for their safety.

(c) "Resistance forces" reportedly continue to be armed by the Government.

(d) It has been reported that all parties are in possession of large quantities of arms.

(e) In the absence of a human rights commission, only the Ombudsman Commission can play a role, at present, in assisting with investigations of violations of human rights. Until such time as a commission of human rights is established, the international community can play an important role in assisting with the peace negotiations and in conflict resolution.

B. Remedies under the judicial system

72. The Special Rapporteur notes that the judicial system in Papua New Guinea works well, on the whole, and the judiciary is independent. However, he wishes to point out the following:

(a) The lack of resources for the judiciary could undermine the independence of the judiciary.

(b) Violations of human rights which resulted from atrocities committed by all parties to the conflict, i.e. the PNGDF, the BRA and the "resistance forces", have, to date, not been adequately investigated and hardly any alleged perpetrators have been brought before the relevant courts of justice.

(c) The responsibility for investigation of executions and for awarding compensation for violations of human rights should be with the civilian judicial system. According to information received, it would appear that civilian complaints for atrocities committed by Defence Force personnel are tried by military courts, a situation which is contrary to the rules of natural justice. Any conclusions reached after such investigations, if any, have not been made public.

(d) No coronary inquests have taken place in respect of the numerous deaths which have occurred during the years of the conflict.

(e) Adequate legal aid programmes have not been instituted.

(f) Although, civilian control over the armed forces is established under the Constitution, with proper procedures, in reality the National Execution Council has failed in its duty to review the excesses of the PNGDF.

(g) Brutal reprisals committed by the PNGDF against civilians are not acceptable. Its role in Bougainville is only to support the police force.

(h) In this connection, the Special Rapporteur takes note of the three constitutional offices of Public Prosecutor, Public Solicitor and Ombudsman Commission. He believes that a proactive role should be played by the Ombudsman Commission by taking the initiative in investigating complaints of violations of human rights. This role could be transferred to the human rights commission, once established. Apparently no cases have been prosecuted by the Public Prosecutor and no interventions made by the Public Solicitor in respect of possible legal aid to the families of victims.

IX. PARTICULAR CONCERNS

73. It has been reported to the Special Rapporteur that in June 1992 Col. Leo Nuai, a PNGDF official, admitted on Australian television that PNGDF helicopters had been used to dump at sea the bodies of six civilians who had been beaten and extrajudicially killed by PNGDF troops in February 1990. Although dismissed earlier, according to information received he has now been reinstated and is stationed as the head of the PNGDF contingent in Arawa, Bougainville. Apparently, no judicial proceedings have been initiated in respect of the killings of the civilians mentioned above, or the dumping of their bodies at sea.

74. Although the violence has decreased considerably since the cease-fire declared at the peace conference in Arawa in October 1994, human rights violations continue.

75. The Special Rapporteur considers that it is the responsibility of the Government of Papua New Guinea to ensure the safety and security of the whole of the civilian population of the country, which includes those who inhabit Bougainville.

76. In exceptional conditions, Governments are entitled to take special measures, which include the declaration of a state of emergency. Under these circumstances, armed forces can be deployed to assist the forces entrusted with the maintenance of law and order, i.e. the police. However, the excesses of the PNGDF, amounting to violations of human rights, committed with impunity, cannot be justified. Atrocities committed by the BRA cannot be used as justification for retaliatory measures. According to information received, excesses by the security forces of the Government of Papua New Guinea leading to violations of the human rights of the people of Bougainville, although not in as great a number as in previous years, continue to take place.

77. Easy access to arms continues to be detrimental to maintaining peace. In this connection, the provision of arms to "resistance forces", who are civilians from Bougainville, creates a further obstacle. The Special Rapporteur was informed that during peace ceremonies, "resistance forces" were among those who surrendered their arms. However, it could not be ascertained with certainty that arms were surrendered by all "resistance forces". Members of the BRA are believed to have laid down their arms while claiming that they have not surrendered.

78. It would appear that the position of the island of Bougainville has been somewhat different from that of other provinces of Papua New Guinea, in that some degree of autonomy was granted to it. The past attempts to establish this autonomy on a more formal basis have many ramifications for the Government of Papua New Guinea, especially if preferential treatment is given to the island of Bougainville. The Special Rapporteur is aware of the origin of the crisis, which began when it was perceived by Bougainvilleans that profits from the mining operations of BCL should not be distributed equally to all provinces but be allocated mainly to the people of Bougainville. He believes that this is an issue to be negotiated and settled by the parties

concerned. Nevertheless, the Government of Papua New Guinea remains charged with the duty to safeguard the human rights of all the people of Papua New Guinea in all circumstances.

79. The Special Rapporteur has taken particular note of the fact that the women of Bougainville have played a very decisive role in directing the events which led to an environment conducive to peace talks. Their unique position in traditional life and their genuine desire for a lasting peace augur well for peace negotiations. A strong and clear desire was expressed to the Special Rapporteur, especially by the women, for an immediate end to hostilities and for negotiations leading to peace. The Special Rapporteur urges the Government of Papua New Guinea to nurture and uphold all their initiatives.

80. The civilians trapped in the central part of Bougainville are of particular concern to the Special Rapporteur. Their freedom of movement appears to be considerably curtailed. There seems to be a total breakdown of services, resulting in the continued neglect of their needs at the most basic level, because the surrounding areas are controlled by the PNGDF.

81. The Special Rapporteur was informed that a circuit court is convened only periodically in Bougainville and that there is no permanent court from which aggrieved Bougainvilleans can obtain redress for violations of human rights committed against them. The infrequency of the sittings of the circuit court reflects the lack of a permanent legal structure to hear cases of violations of human rights carried out with impunity, thus precluding access to legal recourse where justified.

82. The tendency to retaliate and carry out reprisals by both the PNGDF and the BRA has resulted in a culture of violence. The traditional structures for settlement of conflicts under the chiefs have eroded.

83. Under the Emergency Powers Act of 1989 (and also the Emergency Powers Rules, 1989) some basic rights and freedoms guaranteed by the Constitution were curtailed.

84. The Special Rapporteur notes with satisfaction the role played by the Ombudsman Commission which resulted in the repeal of parts of the Internal Security Act of 1993. However, the curtailment of civil and political rights of the population of the island of Bougainville remains a cause for concern. 13/

X. RECOMMENDATIONS

A. The peace and reconciliation process

85. The reconciliation process must start at the grass-roots level and every available means, including the media and especially radio broadcasts, should be used to disseminate peace propaganda in order to set the stage for peace negotiations. All parties to the conflict should advocate and enforce respect for human rights and the rules of humanitarian law as part of the peace propaganda.

86. A favourable climate for the establishment of non-governmental human rights organizations should be encouraged so that they can contribute actively.

87. The Special Rapporteur recommends that international non-governmental human rights and humanitarian organizations should be allowed access to all the population of Bougainville and especially to the central part of Bougainville.

88. The Bougainville Transitional Government seems to be playing a role which is acceptable to the people in Bougainville as well as to the Government of Papua New Guinea, and it should be supported and encouraged.

89. In view of the possible role played by church groups in the past, especially on the island of Bougainville, they should be encouraged to play the role of facilitators in the important task of confidence-building.

90. The international community must take note of the positive peace negotiations which have been recently initiated in the form of meetings between the parties to the Bougainville conflict, held in Cairns in September 1995 and December 1995. The Special Rapporteur urges the international community to support the peace process by rendering material and other aid. Without this assistance, the peace process may not hold.

91. In order to rectify the ravages of the violent conflicts of recent years, the Special Rapporteur recommends that special rehabilitation programmes should be initiated in Bougainville. He believes that special programmes under the aegis of the United Nations Development Programme could play a crucial role in this respect.

92. All services to which the civilian population of Bougainville is entitled should be restored, including health, education and adequate recourse to justice and all educational institutions at primary, secondary and tertiary level should be reinstated in Bougainville.

93. The Special Rapporteur was informed that whereas some villagers had sought refuge and remained in care centres for their own safety, there were others who were not permitted to leave. Those living in care centres should be assisted to regain their places of origin.

94. An internationally financed intermediary force provided from friendly countries in the region, if deemed necessary, could play an important part in the interim period and assist in disarming the armed elements of civilian society.

B. Education and training

95. The Special Rapporteur is particularly concerned about the youth in Bougainville, who have been deprived of access to schools and remain armed, and considers that their situation must be given immediate attention in order to restore normality in their lives.

96. The members of the Armed Forces and the police force should be properly trained in conflict resolution. They should be especially trained to respect the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

97. The Special Rapporteur recommends that specialized training should be given to prosecutors who deal with human rights violations to enable them to become aware of all the dimensions of the applicable international norms.

C. The administration of justice

98. The representatives of the BRA and officials of the Government of Papua New Guinea made it clear to the Special Rapporteur that violations of human rights are not acceptable to them. He considers that all those involved in violations of human rights must be brought to trial after proper investigations.

99. Support for officials dealing with law enforcement and security in Bougainville should be strengthened and the police force should be reinstated in Bougainville.

100. The Special Rapporteur encourages the Government of Papua New Guinea to pursue further the institution of a human rights commission. In this context, the provision of assistance by the Centre for Human Rights and by the international community is recommended by the Special Rapporteur.

101. Consideration should be given to the creation of a truth and justice commission in order to help the reconciliation process and the restoration of the rule of law. For this purpose, the commission should be given the necessary mandate and adequate funding.

102. The procedure for granting amnesty must remain within the constitutional framework of the country, with a view to promoting sustainable and lasting peace and reconciliation. The procedure adopted should not suppress the truth and there should be adequate provision for compensation of the victims and their families. The process of reconciliation must not derogate legal provisions relating to remedies, if lasting peace is to be achieved. Traditional methods of resolving conflicts should, so far as possible, be retained.

103. The Special Rapporteur urges the Papua New Guinea authorities to establish transparency and a system of public reporting on human rights issues.

104. The Special Rapporteur urges the Government of Papua New Guinea to take into account the provisions of the Fourth Geneva Convention of 1949 which guarantees the right of access of civilian populations to humanitarian aid in cases of armed conflict.

105. The Special Rapporteur encourages the Government of Papua New Guinea to adopt and ratify those international norms and treaties it has so far not adopted, 14/ and especially the International Covenant on Civil and Political Rights and the Convention on Torture.

106. He suggests that the Special Rapporteur on the question of torture, the Working Group on Disappearances and the Representative of the Secretary-General on internally displaced persons should be invited to carry out a joint mission, if possible, to Papua New Guinea.

Notes

1/ For the historical background, Black Islander by Douglas Oliver has been heavily drawn upon and quoted.

2/ This figure includes an estimate for North Solomons Province (see note 3) as it was not included in the census.

3/ The administrative title for Bougainville and Buka since the independence of Papua New Guinea in 1975 has been North Solomons Province.

4/ Oliver goes on further to say that in fact, German influence began to extend to Bougainville and Buka some years earlier when traders and explorers recruited labourers for plantations on Samoa, the Bismark Archipelago and elsewhere.

5/ On the other hand, Papua had been under Australian administration since 1884.

6/ See "Black Islander" by Douglas Oliver, pp. 27-28.

7/ They demanded that 3 per cent of the gross income of BCL be given to the provisional government, without strings.

8/ A short distance away from the southern tip of Bougainville.

9/ Sam Kauona, a commander in the BRA, was formerly a member of the Papua New Guinea Defence Force and was trained in Australia as an army officer.

10/ Joseph Kabui, a member of the Panguna Landowners' Association, was formerly an official of the Bougainville Mining Workers' Union, and also the Premier of North Solomons Province.

11/ Francis Ona, formerly employed by BLC as a surveyor, was a landowner in the vicinity of the copper mine, and is one of the leaders of the BRA.

12/ See Amnesty International, "Under the barrel of a gun".

13/ See Centre for Human Rights, Technical Cooperation Programme, "Report of a needs assessment mission to Papua New Guinea, 28 May-6 June 1995", pp. 19 and 21.

14/ The Government of Papua New Guinea is a signatory to the following international instruments:

International Convention on the Elimination of All Forms of Racial Discrimination;

Convention on the Prevention and Punishment of the Crime of Genocide;

Convention on the Rights of the Child;

Protocol Relating to the Status of Refugees.